

Committee on Resources

Witness Testimony

**STATEMENT
OF
WESLEY NEIL BRUTON
BEFORE THE
NATIONAL PARKS & PUBLIC LANDS SUBCOMMITTEE
OF THE
HOUSE RESOURCES COMMITTEE
SEPTEMBER 30, 1997
Washington, D.C.**

Chairman

Hansen and members of the Committee, first let me thank you for the opportunity to speak before you today. My name is Wesley Neil Bruton and I am from San Antonio, New Mexico, where I live with my wife, daughter and son. We are part of a family agricultural operation that has been in Central New Mexico since 1880 when my great grandfather moved there from South Texas.

With my parents, we ranch and farm on private, state and federal lands. In the West, you acquire land and the public permits that go with it, by inheriting it or purchasing it. As a family, we built the operation purchasing private land along with state and federal leases. I am proud that my father is here with me today. It is our intention to pass what we have on to my daughter, Brittany, who turns 12 today, and Wesley, who is 4.

We earn everything we have. We do not have federal insurance or retirement plans. We do not get paid vacations. We pay our taxes and we've never been on welfare.

Our operation includes Bureau of Land Management (BLM) land as well as Bureau of Reclamation lands that are administered by the BLM. In many cases, these lands are co-mingled with state and/or private property, with no fencing.

Frankly, Dad and I would rather be home today, doing what we think we do best, caring for our animals and our land. Actions of the federal government have made that impossible.

We have heard the stories about how the government, our government, is taking away citizens rights. We thought those things happened to other people. We were wrong and we should have known better. It has happened to the family before.

The federal government took land from my grandparents back in 1941 for White Sands Missile Range. At that time, it was patriotism that was the standard bearer for land grabs. We are a patriotic people. My father served in the Korean conflict and we do believe in fighting for what is ours and what is right.

We are here today to tell you about what the federal government has done to us in 1997 in the name of a bird. We learned this spring that federal employees or folks contracted by the federal government trespassed

on our PRIVATE land in search of endangered species, specifically the Southwestern Willow Flycatcher.

They then used the information they obtained while trespassing on our land, our private land, to remove us from one of our federal land leases. In that area, we run 175 mother cows. The spring and summer of the year is when the forage is at its best, and it is also the time when most of the cows are calving, lactating and breeding back.

Based on the information gained through illegal entry, the federal government issued a decision to eliminate grazing in the area for three-and-a-half months during the prime portion of the year. That was bad enough.

However, the decision was a "full force and effect" decision which requires IMMEDIATE compliance. That immediate compliance in our case was six (6) days. We had only six days to remove 175 cows, along with many calves of varying ages and sizes. The river was high and flooding and the brush was all in full foliage, making it impossible to use horses or any other method of gathering the cattle. We had to go in on foot and in small boats. We ended up hauling one heavily pregnant cow out in a boat.

We generally gather this area in the fall, when there is little foliage and bait the cattle out with feed. Then it usually takes us three to four months to get the job done.

In addition to getting the cattle out of the river bottom, we had to find other pasture for them. That was no easy chore and was extremely expensive because most of our area was just recovering from a drought. The pasture we found was over 150 miles away. In all we spent more than \$32,000 in additional pasture rent, labor and trucking to move the animals.

If we had not complied with the removal order within the six days allotted, we would have been guilty of willful trespass on federal property which could have resulted in the impoundment of our cattle as well as large fines. In addition, all of our other permits on federal lands would have been in jeopardy.

With a full force and effect decision, any appeal, which must initially be done through the administrative process, cannot take place until after compliance with the order. We did try to use the courts to at least get more time to remove the cattle. However, with only six days to comply, by the time we got a lawyer hired and the proper paperwork filed, the time was up.

We were denied the stay near the end of July, better than 90 days after we had to remove the cattle. We have filed an appeal administratively, and have yet to hear anything about it.

The driving force behind this nightmare is the Endangered Species Act which caused the U.S. Fish & Wildlife Service to issue a notice to the Bureau of Reclamation that grazing could result in a "take" of the Southwestern Willow Flycatcher. A "take" of an endangered species can result in criminal action as well as stiff fines.

The Southwestern Willow Flycatcher is a bird listed in March 1997. It is a subspecies that can only be identified by the way it sings. If you haven't heard one, you won't know one.

It amazes me that federal employees can identify such a creature by sound alone, but they do not have the ability to identify property lines between federal and private land on a map.

Since this mess has started, we learned that inventories were done on our PRIVATE land in 1994, 1995 and

1996 for the Southwestern Willow Flycatcher. In 1996, cowbirds were also trapped on our private land without our knowledge or permission. The primary concern with grazing in areas where there may be willow flycatchers is the cowbird. It is believed, but not scientifically proven, that cows attract cowbirds. The cowbird is also present where there are several other forms of livestock.

In any event, we are told that cowbirds lay their eggs in flycatcher nests. The flycatchers then end up raising baby cowbirds instead of their own. There is also some concern that cattle knock down nests, but most of the low nests are over the water and our cows, at least, are not big swimmers.

The last five months have been a nightmare that I would not have believed could have happened to me or anyone else in this United States. And, it appears that it has only just begun. We have been unable to get any commitment from the Bureau of Reclamation about our future in utilizing the grazing land. There is a land use plan in the works, but grazing has yet to be addressed.

At the present time there is no stability in our agricultural operation. We don't know where or if we will be able to use the land we have paid to use and have maintained for years. Our private land now has no resale value. Who in their right mind would want to get involved in this mess?

We were allowed to go back on the area with the cattle on August 1, 1997, but we do not know when we will be forced to remove them again. We have been told that we will be allowed additional AUMs this winter to make up for those lost. But, our livestock are unable to benefit from the prime nutritional value in the forage that was there in the spring and summer because we were forced to remove them. And, you cannot make up for the nutritional value lost to the cattle at a critical time in their life cycle.

We want to leave this ranch to our children, but who would wish such a thing on their kids?

I know you are here today to discuss the reduction of use on BLM lands. From my perspective, until and unless the Endangered Species Act is modified, future use of BLM lands will continue to be a target of the Fish & Wildlife Service and citizens like my family and I are in serious trouble.

There is no avenue in the Endangered Species Act for individuals to have any meaningful input. Science means nothing. Economic impact means nothing. Custom and culture mean nothing. The Fish & Wildlife Service is a kingdom of its own and is a predator to federal funding. Other federal agencies are being forced to spend millions on endangered species consultation and assessment. There are no checks and balances.

Private citizens like us cannot constantly patrol their property to keep federal intruders from trespassing. And few of us have the money to hire lawyers to protect our rights. That's why we elected folks like you.

In three years of federal research, we were never once contacted about the presence of the willow flycatcher on our property. Our local government was never consulted and there has never been any economic or cultural analysis done on the area in relation to this issue.

Common sense indicates that this would have been an ideal year to study the true affects of grazing on the willow flycatcher. The Fish & Wildlife Service was trapping cowbirds, we had out-of-bank flooding on the river, and the cows were happy. Instead, we were put through hell. Not only have we been put through a great deal of personal stress and expense, but our own tax dollars have been paying for the oppression upon us.

I thank you again for your time and consideration. My family certainly hopes and prays that you folks here in Washington can see what is being done to those of us in the country before too many more of us are put out of business.

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